



Mr. Gene Mayer

March 19, 1986

Eric F. Eisenlauer

Supplemental Assessment Roll

In your memo to Richard Ochsner dated February 11, 1986, you have requested that we advise you whether you should instruct San Bernardino County to cancel two supplemental assessments under the following facts.

1. On March 15, 1984, James W. and Frieda E. Collins (Landlord) leased a parcel of vacant land in San Bernardino County to MCI Telecommunications Corporation (Tenant). The essential provisions of the lease for purposes of this memo are as follows:
 - a. The lease is for a term of five years and commenced July 1, 1984.
 - b. Rent is \$6,000 per year payable in advance on July 1 each year.
 - c. Tenant has the option to renew for eight successive periods of five years each.
 - d. Landlord is to pay all property taxes on the land except for increases over and above the 1983-1984 property taxes which are to be paid by Tenant.
 - e. All buildings, fixtures, towers, improvements and equipment erected, located, placed or constructed on the site by Tenant or its assigns are to remain the personal property of Tenant or its assigns regardless of the means of attachment and are to be removed by Tenant or its assigns no later than 60 days after the lease terminates. Landlord expressly waives any lien or claim of lien on all improvements.
 - f. Tenant has a right of first refusal to purchase the land from Landlord.

2. On May 1, 1985, MCI completed construction of improvements on the site.

3. On October 12, 1985, the San Bernardino County Assessor mailed a Notice of Supplemental Assessment to the Landlord as a result of the completion of new construction. Apparently, the Assessor was unaware of the lease or its terms since no supplemental assessment was made pursuant to Revenue and Taxation Code Section 61(c) as a result of "[t]he creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options)...."

4. On December 23, 1985, the San Bernardino County Treasurer-Tax Collector sent two supplemental tax bills to Landlord.

Revenue and Taxation Code Section 75.14 provides that "[a] supplemental assessment...shall not be made for any property not subject to the assessment limitations of Article XIII A of the California Constitution...." Recently, the California Supreme Court held that Article XIII A applies only to locally assessed property and not to public utility property which is state assessed pursuant to Article XIII, Section 19 of the California Constitution (ITT World Communications, Inc. v. City and County of San Francisco, (1985) 37 Cal.3d 859).

Article XIII, Section 19 of the California Constitution provides in relevant part that "[t]he Board shall annually assess...property, except franchises, owned or used by regulated... telephone companies,...."

Under the terms of the lease, MCI, a regulated telephone company, had the right to use the land subject to the lease commencing July 1, 1984 and in fact did use the land by erecting or causing to be erected on the land the improvements which were completed on May 1, 1985 and subjected to supplemental assessment. Accordingly, it is our opinion that since the land was used by MCI commencing July 1, 1984, that property became subject to Board assessment jurisdiction as of that time and thus was no longer subject to the assessment limitations of Article XIII A of the California Constitution. The same is true with respect to the improvements because not only are they used by MCI, they are owned by MCI under the terms of the lease.

Therefore, since the improvements were not and are not subject to the assessment limitations of Article XIII A.

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of the California Constitution, the supplemental assessments based on the completion of new construction were contrary to Revenue and Taxation Code Section 75.14 and thus were illegally made. It follows that the supplemental assessments should be cancelled.

EFE:fr

cc: Mr. Dave Huber w/att.
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Gene DuPaul
Mr. Jay Hubert